

REMARKS

The following remarks are submitted in response to the Official Action of the Examiner mailed November 7, 2003 (i.e., Paper No. 26). Having addressed all objections and grounds of rejection, claims 1-22, being all the pending claims, are now deemed in condition for allowance. Reconsideration to that end is respectfully requested.

The Examiner has surprisingly again rejected all pending claims (i.e., claims 1-22) under 35 U.S.C. 102(b) as being anticipated by Cool ICE User's Guide Release 1.0. This rejection is particularly curious in that this directly corresponds to the Examiner's first prior art rejection in the initial office action (i.e., Paper No. 3) mailed December 20, 2000 (some three years ago). Based upon the arguments of Applicants' submission of April 2, 2001 (i.e., Paper No. 4) and the Examiner's Official Action mailed June 15, 2001 (i.e., Paper No. 5), it was assumed that this anticipation rejection had been adequately addressed. In fact, the Examiner writes her acceptance at paragraph 19 of Paper No. 5 stating:

In response to Applicant's argument a new rejection is made citing *Classic MAPPER* User's Guide.

Therefore, Applicants are confused regarding whether Examiner has changed her mind concerning her previous findings or has merely forgotten about the prosecution history. Nevertheless, this rejection is respectfully traversed for the reasons provided in the previously successful Paper No. 4.

The Examiner has further stated:

Applicant has admitted in the declaration under 35 USC (sic) 1.131 that the invention is encompassed in COOL ICE.

It is unclear to which declaration the Examiner refers, however, the Declaration Under 37 C.F.R. 1.131 of sole inventor, Niels Gebauer dated January 13, 2003 states:

5. The invention of pending claims 1-22 of the subject U.S. Patent Application was first commercially embodied in a product of Unisys Corporation entitled Cool ICE Revision 1.1;

In her office action mailed February 25, 2003, the Examiner evidenced her misunderstanding of the Niels Gebauer Declaration by stating:

Note paper number five in which COOL ICE User's Guide Release 1.1 was cited; Applicant has admitted in the declaration that claims 1-22 are embodied in this reference which has a publication date (sic) March 1997.

She had confused Cool ICE Revision 1.0, which is cited prior art, to Cool ICE Revision 1.1, which is not prior art, and into which the present invention was first incorporated. On the basis of that error, she refused to enter the Declaration of Niels Gebauer.

This error of the Examiner was explained in detail in Applicant's submission of May 20, 2003. At first glance, it appears as though the Examiner has finally understood that Cool ICE Revision 1.0 is prior art and Cool ICE Revision 1.1 is not prior art and is the first embodiment of the invention. At paragraph 4 of Paper No. 26 (the pending office action), the Examiner has withdrawn her objection to the January 13, 2003 Declaration of Niels Gebauer and has entered it into the record.

As a result, not only is the rejection of claims 1-22 as being anticipated by Cool ICE Revision 1.0 incorrect as a matter of law, it is absolutely inconsistent with the Examiner's entry of the Declaration of Niels Gebauer in response to Applicant's previous arguments.

The rejection of claims 1-22 as anticipated by Cool ICE Revision 1.0 is respectfully traversed as a matter of law.

The Examiner has rejected claims 1-22 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,621,892, issued to Cook (hereinafter referred to as Cook). This ground of rejection is respectfully traversed as a matter of law for failure of the Examiner to present a *prima facie* case of obviousness and as based upon clearly erroneous findings of fact.

MPEP 2143 requires the Examiner to show that an alleged combination has all of the claim elements to meet the burden of

presenting a *prima facie* case of obviousness. Not only has the Examiner not done so, she admits that Cook does not have an "unavailability message". The Examiner has maintained this position since at least May 9, 2002, when she mailed an official action alleging the combination of Cook with U.S. Patent No. 6,347,330, issued to Dawson et al. (hereinafter referred to as "Dawson") to provide the missing "unavailability message". As of Paper No. 26, Applicant has successfully sworn behind Dawson. Therefore, as freely admitted by the Examiner, the current combination of the sole Cook reference does not contain the missing "unavailability message". Therefore, the rejection of claims 1-22 is respectfully traversed for failure of the Examiner to present a *prima facie* case of obviousness.

Furthermore, the Examiner bases her rejection on clearly erroneous findings of fact. Specifically, the Examiner attempts to imply that Server 214 of Cook containing Event Management 222 sends "alert messages". This is contrary to the explicit teaching of Cook. The second complete sentence of the Abstract states:

The event management software receives alerts sent by other computers on the network.

Contrary to the suggestion of the Examiner, server 214 of Cook only receives alert messages. It does not send alert messages. Therefore, the rejection of claims 1-22 is respectfully traversed.

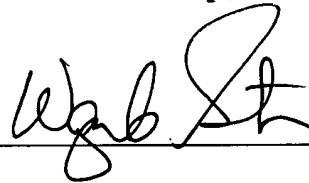
Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-22, as amended, being the only pending claims.

Respectfully submitted,

Niels Gebauer

By his attorney,

Date February 6, 2004

A handwritten signature in black ink, appearing to read 'Wayne A. Sivertson', written over a horizontal line.

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